

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

01-14-2005

IN THE MATTER OF:)	Docket No. CAA-5- 2000-0 06
)	
Adams Plating Company)	Proceeding to Assess a
Lansing, Michigan)	Civil Penalty under
)	Section 113(d) of the
Respondent.)	Clean Air Act,
)	42 U.S.C. § 7413(d)
)	

Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Adams Plating Company (Adams), a corporation doing business in Michigan.

Statutory and Regulatory Background

4. Under Section 112 of the Act, the Administrator of U.S. EPA (the Administrator) promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks at 40 C.F.R. §§ 63.340 through 63.347.

5. The NESHAP for Chromium applies to each "affected source," as defined in 40 C.F.R. §63.2, including each decorative chromium electroplating tank used for decorative chromium electroplating. 40 C.F.R. §63.340(a).

6. Under 40 C.F.R. § 63.2, an "existing source" is any affected source the construction or reconstruction of which is not commenced after the Administrator first proposes a relevant emission standard. The U.S. EPA Administrator first proposed relevant emission standards for hard and decorative chromium electroplating sources on December 16, 1993. 58 Fed. Reg. 65768.

7. Under 40 C.F.R. § 63.343(a)(1)(i), existing affected decorative chromium electroplating tanks must comply with the emission limitations in the NESHAP for Chromium by no later than January 25, 1996.

8. The Administrator may assess a civil penalty of up to \$25,000 per day of violation up to a total of \$200,000 for NESHAP violations that occurred prior to January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1). The Debt Collection Improvements Act of 1996 increased the statutory maximum penalty to \$27,500 per day of violation up to a total of \$220,000 for NESHAP violations that occurred on or after January 31, 1997. 31 U.S.C. § 3701 and 40 C.F.R. Part 19.

9. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

10. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

General Allegations

11. Adams owns and operates a facility located at 521 North Rosemary Street, Lansing, Michigan.

12. Adams is a "person" as defined at 42 U.S.C. § 7602.

13. Adams' facility in Lansing, Michigan performs decorative chromium electroplating.

14. Adams owns and operates 2 decorative chromium electroplating tanks within its facility.

15. Adams' facility and its decorative chromium electroplating tanks are an affected source to which the Chromium NESHAP provisions of 40 C.F.R. §§ 63.340 - 347 apply, pursuant to 40 C.F.R. §§ 63.340(a) and 63.2.

16. The 2 decorative chrome electroplating tanks at Adams' facility were constructed before December 16, 1993.

17. The 2 decorative chrome electroplating tanks at Adams' Lansing, Michigan facility are existing sources under 40 C.F.R. § 63.2.

18. Michigan Department of Environmental Quality (MDEQ) inspected the Adams facility on November 18, 1997.

19. On May 6, 1999, under Section 114 of the Act, U.S. EPA required Adams to provide certain information in order for U.S. EPA to determine Adams' compliance with the Act. On May 27,

1999, and June 11, 1999, Adams submitted information in response to the U.S. EPA's Section 114 letter.

Count I

20. Complainant incorporates paragraphs 1 through 19 of this Complaint, as if set forth in this paragraph.

21. The owner or operator of an affected source using a chromic acid bath and chromium anodizing tanks for decorative plating is subject to the work practice standards of 40 C.F.R. § 63.342(f).

22. MDEQ's November 18, 1997 inspection, and Adams' responses to U.S. EPA's May 6, 1999, request for information, verified that Adams uses a chromic acid bath and chromium anodizing tanks for decorative plating.

23. Adams is the owner or operator of an affected source using a chromic acid bath and chromium anodizing tanks for decorative plating subject to the work practice standards of 40 C.F.R. § 63.342(f).

24. Under 40 C.F.R. § 63.342(f)(3), the owner or operator of an affected source subject to the work practice standards of 40 C.F.R. § 63.342(f) must prepare an Operation and Maintenance (O & M) plan, which includes a systematic procedure for identifying malfunctions of process equipment, and process and control system monitoring equipment and for implementing corrective actions to address such malfunctions.

25. Under 40 C.F.R. § 63.342(f)(3)(i), the owner or operator of an affected source subject to the work practice standards of 40 C.F.R. § 63.342(f) must implement the required

O&M plan by the emission compliance deadline of January 25, 1996.

26. On or before May 18, 1998, Adams first prepared and submitted to MDEQ an O & M plan.

27. The O & M plan referenced in the above paragraph 26 did not contain procedures for identifying malfunctions of process equipment, and process and control system monitoring equipment and for implementing corrective actions to address such malfunctions.

28. The O & M plan referenced in the above paragraph 26 was not submitted or implemented by the emission compliance deadline of January 25, 1996.

29. Adams' failure to timely submit an O&M plan specifying procedures for identifying malfunctions of process equipment, and process and control system monitoring equipment and for implementing corrective actions to address such malfunctions violated 40 C.F.R. § 63.342(f)(3)(i)(E).

Count II

30. Complainant incorporates paragraphs 1 through 29 of this complaint, as if set forth in this paragraph.

31. 40 C.F.R. § 63.343(c) requires the owner or operator of an affected source to conduct monitoring to demonstrate continuing compliance with the emission limitations of the Chromium NESHAP.

32. 40 C.F.R. § 63.342(f)(3)(i)(B) requires that the O & M plan must incorporate work practice standards for the monitoring equipment used to comply with the Chromium NESHAP, as identified in Table 1 of 40 C.F.R. § 63.342, if the specific equipment used

is identified in Table 1.

33. In its responses to U.S. EPA's May 6, 1999, request for information, Adams admitted that it uses a stalagmometer as monitoring equipment to comply with the Chromium NESHAP.

34. A stalagmometer is a type of monitoring equipment listed in Table 1 of 40 C.F.R. § 63.342.

35. Under 40 C.F.R. § 63.342(f)(3)(i), the owner or operator of an affected source subject to the work practice standards of 40 C.F.R. § 63.342(f) must implement the required O&M plan by the emission compliance deadline of January 25, 1996.

36. On or before May 18, 1998, Adams first prepared and submitted to MDEQ an O & M plan.

37. The O & M plan referenced in the above paragraph 36 did not incorporate work practice standards for the stalagmometer it uses as monitoring equipment to comply with the Chromium NESHAP.

38. The O & M plan referenced in the above paragraph 36 was not submitted or implemented by the emission compliance deadline of January 25, 1996.

39. Adams' failure to timely submit an O & M plan incorporating the work practice standards for the monitoring equipment, as identified in Table 1 of the 40 C.F.R. § 63.342, violated 40 C.F.R. § 63.342(f)(3)(i)(B).

Count III

40. Complainant incorporates paragraphs 1 through 39 of this Complaint, as if set forth in this paragraph.

41. The NESHAP for Chromium, at 40 C.F.R. § 63.342(d), requires each owner or operator of an existing affected source to

control chromium emissions discharged to the atmosphere from that affected source by either: (1) not allowing the concentration of total chromium in the exhaust gas stream discharged to the atmosphere to exceed 0.01 mg/dscm (4.4×10^{-6} gr/dscf); or (2) if a chemical fume suppressant containing a wetting agent is used, by not allowing the surface tension of the electroplating or anodizing bath contained within the affected source to exceed 45 dynes per centimeter (dynes/cm) (3.1×10^{-3} pound-force per foot [lb_f/ft])).

42. Under 40 C.F.R. § 63.343(c)(5)(ii), the owner or operator of an affected source must monitor the surface tension of the electroplating or anodizing bath.

43. Adams admitted in its responses to U.S. EPA's May 6, 1999, request for information that Adams uses a wetting agent-type or combination wetting agent-type/foam blanket fume suppressant to meet the emission limitations of 40 C.F.R. § 63.342.

44. The information submitted by Adams in its responses to U.S. EPA's May 6, 1999, request for information indicates that Adams did not monitor the surface tension of electroplating tanks 1 and 2 prior to February 2, 1998.

45. Adams failure to monitor the surface tension of the electroplating tanks 1 and 2 from January 25, 1996, to February 2, 1998, violated 40 C.F.R. § 63.343(c)(5)(ii).

Count IV

46. Complainant incorporates paragraphs 1 through 45 of this Complaint, as if set forth in this paragraph.

47. Under 40 C.F.R. § 63.346(b)(11), the owner or operator of each affected source subject to the NESHAP for Chromium must maintain records of the total process operating time of the affected source.

48. In its responses to U.S. EPA's May 6, 1999, request for information, Adams failed to provide records of the total processing time for Tanks 1 and 2.

49. The information submitted by Adams in its responses to U.S. EPA's May 6, 1999, request for information indicates that Adams does not possess records of the total processing time for Tanks 1 and 2.

50. Adams' failure to keep records of the total process operating time of the tanks 1 and 2 violates 40 C.F.R. § 63.346(b)(11).

Proposed Civil Penalty

51. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

52. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$65,600. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy). Enclosed with this complaint is a copy of the penalty policy.

53. Complainant developed the proposed penalty based on the

best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

54. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (the Consolidated Rules) at 64 Fed. Reg. 40138 (1999) (to be codified at 40 C.F.R. Part 22) govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

55. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

56. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Thomas Krueger, to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Thomas Krueger at (312) 886 - 0562. Thomas Krueger's address is:

Thomas Krueger (C-14J)

Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Penalty Payment

57. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Thomas Krueger and to:

Attn: Manojkumar P. Patel, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Opportunity to Request a Hearing

58. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 59 through 64 below.

Answer

59. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 55, above, and must serve copies of the written answer on the other parties.

60. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and Federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or Federal legal holiday, the time period extends to the next business day.

61. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

62. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

63. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;

- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in paragraph 55 above.

64. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default Order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default Order without further proceedings 30 days after the Order becomes the final Order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

65. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Thomas Krueger at the address or phone number specified in paragraph 56, above.


66. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty

simply because the parties hold an informal settlement
conference. **CAA-5- 2000-0 06**

Continuing Obligation to Comply

67. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable Federal, State, or local law.

3/13/2000
Date


Bharat Mathur, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

In the Matter of Adams Plating Company, Lansing, Michigan
Docket No.

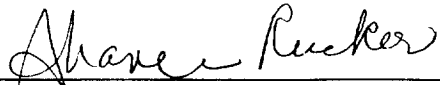
CAA-5- 2000-0 06
CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number [] to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits" at 64 Fed. Reg. 40138 (1999) (to be codified at 40 C.F.R. Part 22), and copies of the penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Steve Adams, President
Adams Plating Company
521 North Rosemary Street
Lansing, Michigan 48917

John A. Yeager
Willingham & Cote, P.C.
333 Albert Ave., Suite #500
P.O. Box 1070
East Lansing, Michigan 48826

on the 14th day of March, 2000.



Shanee Rucker, Secretary
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 219026 490